

fide sale of an on-going business to which the cellular operation is incidental.

(2) The FCC may accept and grant applications for consent to transfer of control or for assignment of the authorization of a cellular system that is to be transferred as a result of the death of the licensee.

(3) The FCC may accept and grant applications for consent to transfer of control or for assignment of authorization if the transfer or assignment is *pro forma* and does not involve a change in ownership.

[59 FR 59507, Nov. 17, 1994, as amended at 61 FR 58339, Nov. 14, 1996]

§ 22.945 Interests in multiple applications.

This section governs interests in applicants with mutually exclusive applications for a new cellular system. For the purposes of this section, "interest in an application" means interest in the applicant.

(a) *General.* Except as otherwise provided in this section, parties must not have any interest, direct or indirect, in more than one application for authority to operate a new cellular system in the same cellular market.

(b) *Abutting CGSAs.* Licensees of existing systems whose cellular geographic service area (CGSA) abuts a proposed CGSA may each file one application that is mutually exclusive with the applications of other such licensees, even though they share common owners, provided that such licensees do not thereby acquire a simultaneous interest in applications for both channel blocks in any geographical area.

(c) *Publicly traded corporate applicants.* Parties must not have any interest, direct or indirect, in more than one mutually exclusive initial application for which the applicant is a publicly traded corporation, except that ownership interests of less than 5% are not considered. Ownership and other interests in applicants are attributed to their holder and deemed cognizable as set forth below.

(1) *Passive investors.* Investment companies, as defined in 15 U.S.C. 80a-3, insurance companies and banks holding stock through their trust departments

in trust accounts are deemed to have a cognizable interest in a publicly traded cellular applicant only if they hold 10% or more of the stock of the applicant. This provision applies only if an applicant in which such parties hold an interest certifies in its application that no such party has exerted or attempted to exert any influence or control over the officers of the applicant.

(2) *Multiplier.* Attribution of ownership interests in a publicly traded cellular applicant that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50 percent, it is not included in the multiplication.

§ 22.946 Service commencement and construction periods for cellular systems.

(a) *Commencement of service.* New cellular systems must be at least partially constructed and begin providing cellular service to subscribers within the service commencement periods specified in Table H-1 of this section. Service commencement periods begin on the date of grant of the initial authorization, and are not extended by the grant of subsequent authorizations for the cellular system (such as for major modifications). The licensee must notify the FCC (FCC Form 601) after the requirements of this section are met (*see* § 1.946 of this chapter).

(b) To satisfy the requirement of paragraph (a) of this section, a cellular system must be interconnected with the public switched telephone network (PSTN) and must be providing service to mobile stations operated by its subscribers and roamers. A cellular system is not considered to be providing service to subscribers if mobile stations can not make telephone calls to landline telephones and receive telephone calls from landline telephones through the PSTN, or if the system intentionally serves only roamer stations.

(1) [Reserved]

(2) The licensee must notify the FCC (FCC Form 489) no later than 15 days after the requirements of paragraph (a) of this section are met.

(b) *Construction period for specific facilities.* The construction period applicable to specific new or modified cellular facilities for which an authorization has been granted is one year from the date the authorization is granted. Failure to comply with this requirement results in termination of the authorization for the specific new or modified facility, pursuant to § 22.144(b).

[59 FR 59507, Nov. 17, 1994, as amended at 63 FR 68951, Dec. 14, 1998; 64 FR 53241, Oct. 1, 1999]

EFFECTIVE DATE NOTE: At 64 FR 53241, Oct. 1, 1999, § 22.946 was amended by revising the last sentence of paragraph (a), effective Nov. 30, 1999. For the convenience of the user, the superseded text is set forth as follows:

§ 22.946 Service commencement and construction periods for cellular systems.

(a) * * * The licensee must notify the FCC (FCC Form 601) no later than 15 days after the requirements of this section are met (see § 1.946).

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§ 22.947 Five year build-out period.

The licensee of the first cellular system authorized on each channel block in each cellular market is afforded a five year period, beginning on the date the initial authorization for the system is granted, during which it may expand the system within that market.

(a) *Exclusive right to expand within market.* Except as provided in paragraph (b) of this section, the FCC does not accept applications for authority to operate a new cellular system in any unserved area in a market on a channel block during the five year build-out period.

(b) *Partitioned markets.* During the five-year build-out period, the licensee of the first cellular system on each channel block in each market may enter into contracts with eligible parties, allowing such parties to apply by using FCC Form 601 for a new cellular system in that channel block within the market. The FCC may grant such applications if they are in compliance with the rules in this part. Markets

with two or more authorized cellular systems on the same channel block during the five year build-out period are referred to (with respect to the affected channel block) as “partitioned markets”.

(1) Partitioning contracts must define the CGSA of the subsequent cellular system in accordance with § 22.911, including any expansion rights ceded. If not exercised, any such expansion rights terminate at the end of the five year build-out period.

(2) The five year build-out period begins on the date the initial authorization for the first cellular system is granted, and is not extended or affected in any way by the initial authorization of any subsequent cellular systems pursuant to paragraph (b) of this section.

(c) *System information update.* Sixty days before the end of the five year build-out period, the licensee of each cellular system authorized on each channel block in each cellular market must file, in triplicate, a system information update (SIU), comprising a full size map, a reduced map, and an exhibit showing technical data relevant to determination of the system’s CGSA. Separate maps must be submitted for each market into which the CGSA extends, showing the extension area in the adjacent market. Maps showing extension areas must be labeled (i.e. marked with the market number and channel block) for the market into which the CGSA extends. SIUs must accurately depict the relevant cell locations and coverage of the system at the end of the five year build-out period. SIUs must be filed at the Mobile Services Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554. If any changes to the system occur after the filing of the SIU, but before the end of the five year build-out period, the licensee must file, in triplicate, additional maps and/or data as necessary to insure that the cell locations and coverage of the system as of the end of the five year build-out period are accurately depicted.

(1) The scale of the full-size map must be 1:500,000, regardless of whether